IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.165 OF 2005

Central Bank of India. ...Petitioner.

Vs.

M/s.Ashoka Construction. ...Respondent.

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Mr.H.N.Thakore i/b. M/s.Thakore & Jariwala Asso. for the Petitioner.

Mr.R.S.Apte for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

December 20, 2005.

P.C. :

The arbitral award of the Tribunal constituted under the Arbitration and Conciliation Act, 1996, was passed on 3rd April 1999. The Arbitrator awarded pendente lite interest and future interest on and from 4th May 1999. The applicant filed an Arbitration Petition under Section 34 to challenge the award which was decided on 31st March 2003 by the District Court. An appeal filed against the judgment of the District

Court was dismissed by this Court on 8th July 2003. The Respondent had filed an application for modification of the award which was disposed of by the District Court on 14th August 2003 and it is common ground that the order of the District Court has not been challenged. In a reply dated 7th July 2003 to the application filed by the Respondent for modification, the Applicant herein stated thus:

> "The applicant-Bank submits that the amounts arrived at by this Hon'ble Court are correct and there is no need to make any corrections in the Judgment delivered and orders passed by this Hon'ble Court on 31-03-2003."

Therefore, the applicant was of the considered position that the calculations which have been arrived at were correct and no correction was warranted. An application under Section 152 of the Code of Civil Procedure, 1908 has been filed over two years thereafter, which has resulted in the order of the Additional District Judge declining to carry out any further modification. According to the Bank, the amount by way of pendente lite interest should be Rs.1,70,953/- and not Rs.2,43,742/-. The arbitral award must have some degree of finality. In the present case, the Bank has exhausted all the opportunities available

to it including a Petition under section 34 and an appeal against the order of the District Court on the petition. Even when the Respondent moved an application for modification, the applicant took a consistent stand that the calculations in the judgment of the District Court were correct and did not suffer from error. In these circumstances, the exercise of the revisional jurisdicition under Section 115 of the Code of Civil Procedure, 1908, is not warranted, having regard to the settled limitations governing the exercise of this jurisdiction. The order does not suffer from any error. While dismissing the Civil Revision Application, it is clarified that the present order shall not stand in the way of the executing Court in deciding the application at Exh.79 which is pending consideration.

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